

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JULIAN ROSARIO and
MARIA GOMEZ,

Plaintiffs,

V.

VALENTINE AVENUE DISCOUNT
STORE, CO., INC., et al.,

Defendants.

* * * * *

TRANSCRIPT OF CIVIL CAUSE FOR HEARING
BEFORE THE HONORABLE LOIS BLOOM
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiffs:

MICHAEL J. BORRELLI, ESQ.
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For the Defendant:

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1 (Proceedings commenced at 3:06 p.m.)

2 THE CLERK: Civil cause for hearing, docket no. 10-
3 CV-5255, Rosario against Valentine Avenue Discount Store Co.,
4 Inc., et al.

5 Will the parties please state your names for the
6 record.

7 MR. BORRELLI: Michael Borrelli for the plaintiffs.
8 Good afternoon, Your Honor.

9 MR. PETERS: And George T. Peters for the
10 defendants. Good afternoon.

11 THE CLERK: The Honorable Lois Bloom presiding.

12 THE COURT: Good afternoon, Mr. Borrelli and Mr.
13 Peters and I note for the record that Mr. Peters has
14 apparently brought Mr. Srour. Is that correct?

15 MR. SROUR: Yes. Yes.

16 THE COURT: Good afternoon, Mr. Srour. I set this
17 hearing in plaintiff's civil action under the Fair Labor
18 Standards Act and New York Labor Law.

19 As you are, or should have been made aware by your
20 attorney, the Court granted a motion for conditional
21 certification as a collective action and directed defendants
22 to produce the names, last known addresses, telephone numbers
23 and dates of employment for potential opt-in plaintiffs at
24 the stores that are named as defendants in this action.

25 Those deadlines for providing the information were

1 extended and then the Court had a telephone conference where
2 Mr. Peters for the first time appeared on your behalf, Mr.
3 Srour, and this was on plaintiff's motion to compel
4 defendants to produce the opt-in information that had
5 previously been ordered. There had been no request to extend
6 the time.

7 Mr. Peters, even though he was new counsel, was on
8 notice that the Court's deadline for filing the information
9 was extended only until November 30th. At the telephone
10 conference on January 5th, I said that the letter that had
11 been submitted by defendants was inadequate and that there
12 would have to be further information. I was giving your
13 attorney a last chance to submit information.

14 At the last status conference which was
15 January 13th, defendants proffered an unsworn affidavit by
16 you, Mr. Srour, with a list of names and addresses of
17 employees from 11 stores. I found the submission to be
18 insufficient as there was no sworn statement by you.

19 There was nothing specifying what efforts had been
20 made to locate the employee information, how the information
21 that was being provided was located and it specifically
22 directed you to post the notice in the store and your
23 declaration stated that the notice will be posted in two
24 stores that remain open.

25 So I again gave defendants time to file a sworn

1 affidavit by yesterday. I still haven't seen any sworn
2 affidavit, Mr. Peters.

3 MR. PETERS: Correct, Your Honor. The submission
4 if it were to have been submitted yesterday would have been
5 incomplete. As such, I brought Mr. Srouer here to answer any
6 and all questions. He's attempting to get the discovery
7 still and he can proceed if it's all right with the Court.

8 THE COURT: I don't really understand what you and
9 Mr. Srouer are thinking.

10 If you're told to file something and you don't have
11 enough time, you make an application to the Court on notice
12 to the other side stating what efforts you have made to
13 comply with the Court's order and how much time you need.
14 You don't just leave it and say well, we didn't really have
15 all the information so we decided to file nothing.

16 Do you understand your client is threatened with
17 sanctions which could include contempt of Court? I'm glad
18 he's here so that we don't have to reach the issue of whether
19 he wilfully violated the Court's order by failing to appear.
20 Has he brought the records that he's been directed to bring?

21 MR. PETERS: I have the records, Your Honor.

22 THE COURT: And have you --

23 MR. PETERS: Some of them.

24 THE COURT: -- have you shown them to Mr. Borrelli?

25 MR. PETERS: As yet, I have not, Your Honor.

1 THE COURT: Again, this is not the way we operate
2 in Federal Court, Mr. Peters and Mr. Srour. I want you to
3 understand this is a Fair Labor Standards Act case which
4 means you under the law have the burden to produce the
5 payroll records showing what you paid these people, how many
6 hours they worked. This is your burden as the employer.

7 And for whatever your reasons are to be given three
8 chances to comply with an order from back in November, you
9 understand that this -- well, I'm going to have you sworn to
10 the truth of your testimony. I'm not going to just let you
11 speak. Your attorney's here to speak for you. Mr. Borrelli,
12 this is now how we generally proceed in these cases.

13 So I did grant your motion to compel, but I'm not
14 going to do all the work for plaintiffs, either. Have you
15 thought about what the proper way to go about getting the
16 information you need is in light of the fact that I made Mr.
17 Srour appear today?

18 MR. BORRELLI: I hadn't given it much thought yet,
19 Your Honor. I honestly didn't think that the defendants
20 would wilfully fail to comply with Your Honor's order on
21 three separate occasions so I was -- I'm sort of
22 flabbergasted. We can certainly start subpoenaing, you
23 know -- we can't subpoena anything from that information of
24 payroll companies or bank records or something.

25 THE COURT: Well, again, that's what I believe Mr.

1 Srouer is going to have to testify to today under penalty of
2 perjury. I'll have him sworn to the truth of his statements
3 and we'll put it on the record.

4 But again, this is not protecting your client's
5 interests, Mr. Peters, because if he swears to things on the
6 record today in open court and they turn out not to be true,
7 he could be prosecuted by the United States Attorney for
8 making false statements in a federal courtroom.

9 MR. PETERS: I understand, Your Honor, and to my
10 knowledge, he's not going to make any untrue statements.

11 THE COURT: I understand it, but you're telling me
12 you have documents that you haven't given to Mr. Borrelli
13 yet. What is it that you're thinking here?

14 MR. PETERS: What I'm thinking is that the
15 documents that I received are -- would not be in compliance
16 with the Court's order. As yet, I have not received things
17 that I can produce to the Court to opposing counsel that
18 would be sufficient. As such, we're here today.

19 MR. BORRELLI: Your Honor, I don't understand when
20 a Federal judge gives you an order, you have one choice and
21 that is to comply with that order. At this point, my clients
22 are being prejudiced every day that this prolongs itself.
23 There are plaintiffs that are losing with the right to
24 opt-in --

25 THE COURT: They are potentially.

1 MR. BORRELLI: Oh, exactly. Potentially.

2 THE COURT: And that could be dealt with at the
3 other end and I'm not ready to address what the potential
4 prejudice would be. I do understand statute of limitations
5 is from the date that they opt-in. I understand him dragging
6 his feet and turning over this information is not good for
7 the potential opt-in plaintiffs, but we're not there yet, Mr.
8 Borrelli.

9 I'm flabbergasted, too, but imposing sanctions on
10 him to make him comply such as a monetary penalty by day or
11 week, I don't know how that helps your client, either.

12 MR. BORRELLI: I would certainly think it would
13 motivate the defendant to act a little more compliance with
14 Your Honor's orders.

15 THE COURT: Well, why don't we call Mr. Srouer to
16 the stand, swear him to the truth of his testimony and let
17 some of the questions be answered about where these records
18 are and why he's failed to produce these records. Mr. Srouer,
19 are you prepared to do that today?

20 MR. SROUR: Yes.

21 THE COURT: Again, I want you to come up to the
22 witness stand, then. Stay standing for a moment and raise
23 your right hand, please.

24 (The witness is sworn.)

25 THE COURT: Please be seated. State your full name

1 and address for the record.

2 MR. SWORN: My name Raymond Srouer and I live in 922
3 Avenue R in Brooklyn, New York.

4 THE COURT: And Mr. Srouer, what is your
5 relationship to the Valentine Avenue Discount Store and the
6 other defendants that are named in this lawsuit?

7 MR. SROUR: I am the operator of those companies.

8 THE COURT: What does "the operator" mean? Are you
9 the sole owner, sir?

10 MR. SROUR: No, I'm not the sole owner in some of
11 the companies.

12 THE COURT: Who else owns the companies with you?

13 MR. SROUR: I started my business since 1980 and I
14 have two partners that went in together.

15 THE COURT: And what are the partners' names?

16 MR. SROUR: One was my brother Freddie Srouer and
17 the other partner I have is Nathan Avidan.

18 THE COURT: How do you spell his name?

19 MR. SROUR: A-V-I-D-A-N.

20 THE COURT: A-V-I-D-A-N?

21 MR. SWORN: Nathan.

22 THE COURT: And are they still partners in these
23 stores?

24 MR. SROUR: No. In 2006 we split up.

25 THE COURT: And so now you're the sole owner?

1 MR. SROUR: Yes. Now I'm a sole owner.

2 THE COURT: And how many stores do you own and
3 operate, sir?

4 MR. SROUR: As of today?

5 THE COURT: Yes.

6 MR. SROUR: As of today, I operate two stores on my
7 own and I have four stores with other partners.

8 THE COURT: The two stores that you operate on your
9 own? What are the names of those stores and the addresses?

10 MR. SROUR: Bergament Outlet Center in 3621 13th
11 Avenue.

12 THE COURT: And where is that?

13 MR. SROUR: Brooklyn, New York. And I operate the
14 store on 1818 86th Street.

15 THE COURT: And what's the name of that?

16 MR. SROUR: In Brooklyn. American Place of 86th
17 Street.

18 THE COURT: And that's 1886 --

19 MR. SROUR: 1818 86th Street.

20 THE COURT: And you're the sole owner of those two
21 stores?

22 MR. SROUR: Yes.

23 THE COURT: And I am going to show you what was
24 given to the Court last time by your counsel. It is an
25 exhibit to -- and I don't have the document number of the

1 last order of the Court. It's 37.

2 It's an exhibit to 37 and it's listed as
3 declaration of Raymond Srouer and there's -- there are a
4 number of other stores that are listed on the front which
5 were named as defendants in this action and from what I can
6 tell even though it wasn't a sworn declaration, there are
7 eight stores that were open in the statutory period that
8 we're concerned with here and nine stores where you provided
9 no or incomplete information.

10 Tell me what efforts have been made to provide the
11 information that the Court directed you to provide back in
12 November.

13 MR. SROUR: Your Honor, when I got the lawsuit back
14 last year, I looked around to find an attorney to help me out
15 with this. Finally I got to Jeff Meyers, my former attorney,
16 and I gave him all the paperwork. He asked me how much -- I
17 gave him a check and he said he will take care of it.

18 I tell you honestly he didn't call me until
19 November last year. He told me I have to see you to ask you
20 for a few things. I said okay. I went to see him in his
21 office. That's the second meeting I ever had with him and he
22 just hand me a huge bill and I tell him what's happening with
23 the case? He says I'm taking care of it and he said I need
24 some documentation for the court and payroll documentation.
25 I looked at his bill. I was in shock. I tell him I'm going

1 to take it out. I tell him give me the file. He says
2 everything's on-line.

3 So then that's when I went to George Peters, that
4 he's in the neighborhood where I had the stores and I hired
5 him, so I asked the Court that whatever documents that you
6 need I will have.

7 I have a lot of them I gave to Mr. Peters, but if I
8 know exactly what you need, what dates you need, I will get
9 them for the Court and I'm doing to do whatever it takes.
10 Now I know how serious this job is and I will do --

11 THE COURT: Look, sir. I'm not allowed to inquire
12 into what happened between you and your attorney.

13 MR. SROUR: I understand.

14 THE COURT: But you're a businessman.

15 MR. SROUR: Yes.

16 THE COURT: You're running more than a couple of
17 businesses. You put something into a lawyer's hand you never
18 check back in? You just wait for him to call you? And
19 again, that he asked you for information and you were shocked
20 at his bill and that you went to a different lawyer -- all of
21 that is --

22 MR. SROUR: Irrelevant.

23 THE COURT: -- it doesn't really answer the
24 question, sir.

25 MR. SROUR: Oh.

1 THE COURT: There were two different things that
2 were submitted to the Court. One was by your former attorney
3 when he asked for more time basically saying that he was
4 looking for the information and that it would take a little
5 more time to provide the information. This was document 28
6 filed by Mr. Meyer on November 17th.

7 It says in light of closure of a number of the
8 named corporate defendants and/or the fact that said
9 corporate defendants have not been in business for a
10 significant period of time, compiling the responsive
11 information has been extraordinarily difficult and time-
12 consuming. Which leads the Court to believe that there was
13 some effort being made to compile that information.

14 They only asked for an extension for 12 days to
15 give that information to the Court. Now you're telling me
16 that there was never a communication to tell you to compile
17 the payroll account records?

18 MR. SROUR: He didn't tell me anything. That's why
19 I -- part of the 12 days was just for me to see him and pay
20 him his money. I mean, I don't think that -- but --

21 THE COURT: Sir, your payroll records from all of
22 these stores are required --

23 MR. SROUR: Yes.

24 THE COURT: -- to be produced.

25 MR. SROUR: I will --

1 THE COURT: Who does the payroll records?

2 MR. SROUR: I have each store done individually.

3 THE COURT: By who?

4 MR. SROUR: By the manager. We have them anyway by
5 Paychex, the company that we can get whatever we're missing.

6 THE COURT: What is the company that did the
7 paychecks?

8 MR. SROUR: All the companies, they do with
9 Paychex.

10 THE COURT: Sir, you're not answering the question.

11 MR. SROUR: Oh. All right.

12 THE COURT: You're saying there was some manager in
13 each store that did your record-keeping.

14 MR. SROUR: Yes.

15 THE COURT: And then somebody else issued the
16 paychecks.

17 MR. SROUR: No, no. What we do is that we give the
18 information to the Paychex company.

19 THE COURT: Who is the paycheck company?

20 MR. SROUR: The paycheck company is -- the name is
21 Paychex.

22 THE COURT: And so how --

23 MR. SROUR: It's a -- it's a --

24 THE COURT: -- come you haven't contacted Paychex
25 to get them to produce the information?

1 MR. SROUR: I did contact Paychex and they gave me
2 all the 2011 employees. I have them.

3 THE COURT: I'm not asking for 2011 only.

4 MR. SROUR: Yes. I'm going to get also 2010 and
5 2009.

6 THE COURT: Where does Paychex -- what is the
7 address of Paychex?

8 MR. SROUR: New Jersey. I don't know really
9 exactly. I have their e-mail. I have the contact person. I
10 could give it to --

11 THE COURT: And they have been doing all of the
12 payroll for all of the stores --

13 MR. SROUR: Yes.

14 THE COURT: -- for all the years --

15 MR. SROUR: Yes.

16 THE COURT: -- that you've been in business?

17 MR. SROUR: Yes.

18 THE COURT: Why didn't you make a demand on them to
19 produce all of that to comply with the Court's order?

20 MR. SROUR: I just -- when George told me three
21 days ago that or last week that you have to get those
22 records, I contacted them. I got some -- the 2011 we got and
23 I ordered also -- I can order the 2010, 2009. They can get
24 for us. We have to pay a fee for that and they can get it
25 for us.

1 THE COURT: Again, sir, you don't understand what
2 you're up against here. I could be today sanctioning you
3 every day that these records are not produced.

4 MR. SROUR: No, I will produce them.

5 THE COURT: And there was a letter submitted by Mr.
6 Peters to the Court on December 23rd. It again said that a
7 number of the defendants have stopped doing business and have
8 not been in business for a significant period of time and
9 they talk about the loss of employee files because a building
10 collapsed or were destroyed by snow. What is this about?

11 MR. SROUR: This is a loss we had in the store in
12 13th Avenue. We had a snowstorm that collapsed the whole
13 roof and we lost a lot of files. We lost a lot of stuff
14 and --

15 THE COURT: When was the snowstorm and when were
16 the fires, Mr. Sroure?

17 MR. SROUR: Not fires. Not fire.

18 THE COURT: What did you say? Files?

19 MR. SROUR: Files, yes.

20 THE COURT: It's not kept on a computer?

21 MR. SROUR: No, we didn't have that. We don't have
22 it.

23 THE COURT: You have no computerized records of
24 your employees?

25 MR. SROUR: No, because Paychex keep all the

1 records.

2 THE COURT: So Paychex should be able to produce
3 this --

4 MR. SROUR: Yes.

5 THE COURT: -- information --

6 MR. SROUR: Yes.

7 THE COURT: -- within two -- within a couple of
8 days. And you should have been asking for this since back in
9 November.

10 MR. SROUR: I was -- honestly, Your Honor, I was
11 never told how serious this thing could get. I will -- if
12 I --

13 THE COURT: Mr. Srou, how did you get the
14 addresses that were provided to the Court by your attorney?

15 MR. SROUR: I got them from the W -- you know, the
16 end of the year this year, we got everybody's W-2's, so we
17 have them all.

18 THE COURT: So you have an accountant who prepares
19 the tax returns for your businesses?

20 MR. SROUR: Definitely.

21 THE COURT: And who's your accountant?

22 MR. SROUR: His name is Harry Kowslow.

23 THE COURT: Can you spell it, please?

24 MR. SROUR: K-O-W-S-L-O-W.

25 THE COURT: And do you know Mr. Kowslow's address?

1 MR. SROUR: Baldwin, New York. I don't know
2 exactly that.

3 THE COURT: So it's K-O-W-S-L-O-W?

4 MR. SROUR: Yes.

5 THE COURT: And has he been your accountant
6 preparing your tax returns for some time?

7 MR. SROUR: Yes.

8 THE COURT: Now according to what was produced to
9 the Court last week, there were 106 names and addresses
10 given. However, 22 of those names and addresses were not for
11 stores that were named as defendants in the lawsuit which
12 leaves us with 84 names and addresses. There were 38 names
13 that were provided where no address was listed. How did you
14 put these records together?

15 MR. SROUR: I don't know which ones you're talking
16 about. The one --

17 THE COURT: I'll pass to you -- I only have the
18 copy I wrote on. Do you have another copy? Thank you. No?
19 Okay. So I'll give him the copy that I wrote on. This -- do
20 you have another copy, Mr. --

21 MR. PETERS: I'm checking, Your Honor.

22 THE COURT: How about you, Mr. Borrelli?

23 MR. BORRELLI: The one that I have has notes on it,
24 Your Honor.

25 MR. PETERS: I appear to only have the declaration,

1 Your Honor. No, I don't.

2 MR. BORRELLI: Your Honor, you can -- I mean, mine
3 just --

4 THE COURT: Mine just counts up how many stores --

5 MR. BORRELLI: Okay.

6 THE COURT: -- and circles Mr. Srour's name being
7 given on quite a few of the lists.

8 MR. BORRELLI: Okay.

9 THE COURT: This list was provided to the Court.
10 How did you get these names?

11 MR. SROUR: Okay. These are the ones I gave him
12 last week. When I went around the stores because he told me
13 that he need -- I went in and looked around where we could
14 find the old files and I took a list of names from like any
15 week that I could find from each store.

16 THE COURT: And names and addresses?

17 MR. SROUR: Yes. They have the addresses.

18 THE COURT: Yes. So where did you get those names
19 and addresses?

20 MR. SROUR: Because they have it like the end of
21 the week report when you get from Paychex, it has their --
22 you know --

23 THE COURT: Why didn't you produce those reports?

24 MR. SROUR: That's what I need -- I could produce
25 those reports. I --

1 THE COURT: That's what the Court ordered you to
2 produce.

3 MR. SROUR: I know.

4 THE COURT: Payroll records, not your own notes.

5 MR. SROUR: No. These are not my own.

6 THE COURT: Mr. Peters had to have something to
7 prepare that list. Is that what you gave to Mr. Peters?

8 MR. SROUR: I gave him --

9 THE COURT: That list?

10 MR. SROUR: No, no. I didn't give him this list.
11 I gave him the check stubs of some of the employees and this
12 way we put it down for you.

13 THE COURT: Mr. Peters, I don't understand why you
14 didn't produce the records that had been produced to you.
15 You gave this list to the Court last week. Last week, the
16 Court issued an order saying it was plainly insufficient. It
17 wasn't sworn to and there was nothing saying that this was
18 information that Mr. Srouer had produced. He's now telling me
19 that he gave you payroll records.

20 MR. PETERS: He gave the -- something that was with
21 the payroll records, Your Honor. However, the Court's order
22 stated that I was supposed to -- that defendant was to
23 provide names, addresses, phone numbers and some other
24 things. They were --

25 THE COURT: Dates of employment.

1 MR. PETERS: Thank you, Your Honor. There were
2 lots of things in the payroll records that have nothing to
3 do, of course, with the other -- with the four things that
4 the Court --

5 THE COURT: Such as Social Security numbers which
6 you could have --

7 MR. PETERS: Well, we could have --

8 THE COURT: -- redacted.

9 MR. PETERS: If I may? May I show the -- would the
10 Court like to see -- I mean, this is a better example of what
11 I received, but would the Court like to see --

12 THE COURT: Again, the Court wants defendants to
13 honor the Court's order and file what has been specified. I
14 said last week that I'd give you another chance. I gave you
15 two different dates. I let you contact your client to pick
16 which date. You chose the earlier date. You could have
17 taken another week and produced the records that he's saying
18 he'll get from Paychex and we wouldn't be here having this
19 discussion.

20 MR. PETERS: Correct, Your Honor.

21 THE COURT: Mr. Srour. I don't think that you're
22 understanding. The Court has a Fair Labor Standards Act case
23 before it. The Court has granted a collective action which
24 means that the plaintiffs' attorneys have gotten to approve
25 that all of these stores, whether or not they're still

1 operating or not operating, that we have to give notice to
2 the employees of each of these stores that there's a pending
3 lawsuit, that they have the opportunity to opt-in. And the
4 Court is finding today that your failure to do so is a
5 willful violation.

6 MR. SROUR: Your Honor --

7 THE COURT: I will give you five days. Five days.

8 MR. SROUR: But --

9 THE COURT: Five business days to produce those
10 records.

11 MR. SROUR: May I ask you something? What is
12 exactly you need me to get?

13 THE COURT: The payroll records for each of these
14 stores and they're going back some time because it's not as
15 if just getting 2011 is going to do it, sir.

16 MR. SROUR: I know. When you say payroll records,
17 do you mean weekly reports? Do you mean yearly reports?

18 THE COURT: Sir, I don't think you understand.
19 Payroll records means all of it.

20 MR. SROUR: All of it? Okay.

21 THE COURT: Because you have to show that you paid
22 them the proper wages and here we're just trying to get who
23 the employees were and their last known addresses.

24 MR. SROUR: Okay.

25 THE COURT: You're going to need those reports in

1 order to prove that you paid if, you're going to defend the
2 case, the proper wages as required the law.

3 Mr. Borrelli? Since you have Mr. Srouer on the
4 stand here, again, I'm shocked that we've come to this point
5 so early in a litigation, Mr. Peters. What about posting the
6 notice?

7 MR. BORRELLI: I posted the notice.

8 THE COURT: In which stores?

9 MR. SROUR: In the two stores that I'm operating.

10 THE COURT: And when you did you post the notice?

11 MR. SROUR: The same day that I told them I would.
12 That evening.

13 THE COURT: And you understand that there can be an
14 inspection made that the notices are posted?

15 MR. SROUR: Yes.

16 THE COURT: And this is at the Bergament and the
17 86th Street --

18 MR. SROUR: Yes.

19 THE COURT: -- address? And those are the only
20 stores that are still in operation?

21 MR. SROUR: From the list that -- from the list
22 that he sued me under, yes. These are the stores. They are
23 still in operation.

24 THE COURT: And Mr. Peters had filed again a list
25 saying that you closed stores in 2011 and I directed him to

1 come prepared with documents showing that those stores were
2 closed. Did you bring those with you?

3 MR. SROUR: Yes. I did.

4 THE COURT: Mr. Peters, do you have those
5 documents?

6 MR. PETERS: I have some of the documents. He's
7 provided a discontinuance of some of the stores. I don't
8 have all of them yet, Your Honor.

9 THE COURT: Can you please pass these to Mr.
10 Borrelli for him to look at and we can have copies made.

11 MR. PETERS: Certainly. One second, please.

12 (Pause.)

13 THE COURT: Mr. Srouer, in the December 23rd letter
14 written to the Court by Mr. Peters, he states "I have advised
15 defendants to request their payroll companies to provide the
16 names and addresses of former and present employees as soon
17 as possible. I would like to be able to offer the Court a
18 time certain date for production of the employee records.
19 However, if defendants are ordering the discovery from a
20 third-party vendor, I cannot reasonably guess how long this
21 process will take." Mr. Peters, did you tell your client in
22 December to get the payroll records?

23 MR. PETERS: Yes, Your Honor.

24 THE COURT: And we are now January 18th, sir. What
25 did you not understand when your lawyer told you get the

1 payroll records?

2 MR. SROUR: It's not I didn't understand. I just
3 didn't take it very seriously to tell you honestly, Your
4 Honor.

5 THE COURT: Well, that's your problem, sir. I'm
6 going to give you five days to produce this information and
7 if you fail to produce the information by Monday, there will
8 be \$500 sanction imposed each day that the records are not
9 produced.

10 And the \$500 will be paid to the Court as a
11 sanction and we'll deal with whether or not your clients are
12 going to be prejudiced down the road.

13 Mr. Borrelli, you've been given the names. Now
14 again, I don't know how reliable the names are that you've
15 already been given, but there are 80 -- can I have the paper
16 back that I gave you, sir? There are 84 names listed
17 excluding Mr. Sroure's name and that's not counting the two
18 stores that were not named as defendants herein.

19 I believe that we can get as an attachment to an
20 order that I'll issue today an updated notice and you can
21 send that notice immediately to see what, if anything,
22 happens. We'll change the dates on the notice but let's get
23 the ball rolling here.

24 I'm giving him five days to produce the information
25 until Monday the 23rd from Paychex. This will be the payroll

1 records. You can redact the Social Security Numbers. You'll
2 also provide records regarding the closure of each of the
3 stores that you claim are no longer in operation to Mr.
4 Borrelli by the 23rd.

5 MR. BORRELLI: Your Honor, there are a few issues I
6 want to raise that some of the testimony Mr. Srouer gave I'll
7 raise with Your Honor or --

8 THE COURT: Raise it now.

9 MR. BORRELLI: -- okay. He had mentioned there are
10 four stores that still exist that he still maintains ownership
11 in, but just not that he's the sole owner or operator of. My
12 first question would be are those stores defendants -- named
13 defendants?

14 MR. SROUR: No, they're not.

15 MR. BORRELLI: Okay.

16 THE COURT: What are the names and addresses of the
17 four stores that you still have ownership interests in that
18 are still operating?

19 MR. SROUR: The stores that I have ownership in is
20 Fordham Road Apparel. It's 1-9 West Fordham Road. And we
21 have a store named Washington Heights Center that's on 3560
22 Broadway and we have a store that -- I forgot the name of the
23 corporation. McDonald Avenue Apparel.

24 THE COURT: I'm sorry. McDonald Avenue?

25 MR. SROUR: McDonald Avenue Apparel.

1 THE COURT: And what's the address of that store?

2 MR. SROUR: 1726 McDonald Avenue. And we have one
3 on 3837 Broadway also.

4 THE COURT: And what's the name of the store that's
5 at 3837 Broadway?

6 MR. SROUR: It's a -- I forgot the name of the
7 corporation they put on it.

8 THE COURT: This one's here. McDonald Avenue's
9 here. It's a different address. It's a different address.
10 And the names that are listed on the lists that were provided
11 last week without addresses?

12 MR. SROUR: This name?

13 THE COURT: Yes.

14 MR. SROUR: They have the address on the check
15 stub. That's why I don't know.

16 THE COURT: But again, Mr. Srou, this is your
17 duty --

18 MR. SROUR:: Yes, ma'am.

19 THE COURT: -- as the employer and are you telling
20 me that you file tax returns each year for each of these
21 businesses?

22 MR. SROUR: Definitely.

23 THE COURT: And so if you file tax returns, then
24 there's going to be records. You can prepare records.

25 MR. SROUR: No. I have -- I should -- I don't know

1 why this name is not there. I don't know why it's there but
2 maybe they didn't --

3 THE COURT: There's many others. You have listed
4 people as terminated employees. You've listed some stores
5 with only names and no addresses.

6 MR. SROUR: Maybe the way they copied it up there.

7 THE COURT: Who's they? This is on you.

8 MR. SROUR: I understand.

9 THE COURT: This is you because you're the only
10 person that is named as an individual. All the rest are the
11 stores.

12 MR. SROUR: I will get you all the information that
13 you need. I mean, I don't --

14 MR. PETERS: Your Honor --

15 MR. SROUR: This is not my paper. I don't know
16 what this is. This is not my paper.

17 THE COURT: Mr. Peters, he's disclaiming that these
18 are not his names, the papers that were produced to the Court
19 last week.

20 MR. SROUR: I'm not saying -- the print-out maybe
21 had the addresses but they didn't print the addresses.

22 THE COURT: Who made that list, Mr. Peters?

23 MR. PETERS: My office did, Your Honor. Even with
24 the new batch, there are some names without addresses. Not
25 many. But there were maybe two this time that didn't have

1 addresses. There are no phone numbers and also with the
2 records that I have there are no dates of employment, either.
3 And that's why I said what I have is insufficient, what I
4 have. And that's what I'm --

5 THE COURT: Mr. Peters?

6 MR. PETERS: Yes, Your Honor.

7 THE COURT: Please understand me in no uncertain
8 terms. Whether or not you got everything you needed from
9 your client, it is your obligation as an officer of the Court
10 to make an application. You have failed twice in that
11 regard, sir. You filed a letter back in December. You were
12 ordered to produce things at the beginning of January and you
13 were ordered to produce things after that conference and you
14 have failed twice to follow the orders of the Court.

15 MR. BORRELLI: Your Honor, one thing that summed
16 that up for me is that Mr. Srour mentioned that the way he
17 was able to get the names for the list that was provided is
18 that he went around to the stores and looked at the reports.
19 Am I wrong in saying that I think at least one of those
20 stores was already closed? Or more than one? Because if
21 there were only two that are operating, how did he go around
22 to 11 different stores and looked at the payroll reports at
23 the end of the week and give us the names?

24 THE COURT: Mr. Srour?

25 MR. SROUR: The stores that we closed were reopened

1 under with new partners. Some of them, they would still have
2 the records there --

3 THE COURT: Sir, if those stores are doing business
4 whether they're been reconstituted or not, they're still
5 subject to this lawsuit.

6 MR. SROUR: Okay.

7 THE COURT: It's not just okay. I don't think you
8 really understand. This is a federal court matter. The man
9 who is the assigned District Judge on the case used to be the
10 lead prosecutor in this District before he came the Chief
11 Judge of the Court.

12 He's no longer the Chief Judge, but you cannot come
13 into Court and just say I really didn't understand how
14 important or what I had to do here. This could subject you,
15 besides to civil liability, if you're lying to the Court
16 under the oath, to five years in prison if you're prosecuted
17 and convicted of perjury.

18 MR. SROUR: I'm getting you everything I know. I
19 will get you everything the Court needs.

20 THE COURT: Within five days, sir. Five days.

21 MR. SROUR: It is very tight.

22 THE COURT: Sir, you've had since November. You're
23 going to have \$500 sanctions against you personally where
24 they can go and attach your bank accounts if you don't pay.

25 MR. SROUR: Where do we deliver -- I mean if we

1 have to go through a lot of books, what do we do? We send it
2 to Borrelli?

3 THE COURT: Everything has to go through Mr.
4 Peters. He's your attorney.

5 MR. SROUR: Okay.

6 THE COURT: Mr. Peters has to make copies and Bates
7 stamp them and I don't care what your weekend plans were.
8 Last weekend when you said you were going to Chicago, I
9 didn't say a word. You picked the date, sir. This is your
10 client. Your client is going to be subject to 500 days until
11 this information is turned over to Mr. Borrelli.

12 And if the 86 names and addresses that have been
13 produced come out to be worthless, we'll revisit the issues
14 of what's appropriate under the circumstances in terms of
15 sanctions.

16 MR. PETERS: Yes, Your Honor.

17 MR. BORRELLI: Your Honor, just to clarify, am I
18 correct that the testimony is that some of the stores were
19 closed or the businesses were discontinued after the
20 commencement of the lawsuit but then reopened under a
21 different name? Is that correct?

22 MR. SROUR: What are you saying?

23 MR. BORRELLI: Some of the stores that were --

24 THE COURT: Why don't you ask a question?

25 MR. BORRELLI: Sure. Some of the stores that were

1 named as defendants in the lawsuit, you're familiar with
2 those stores, correct?

3 MR. SROUR: Yes. The names. Yes.

4 MR. BORRELLI: Okay. Some of those stores were
5 closed after the lawsuit was commenced, correct?

6 MR. SROUR: There are stores that we closed
7 completely.

8 MR. BORRELLI: Right. But some of the stores --
9 you have to answer my question -- were closed after the
10 commencement of the lawsuit, correct?

11 MR. SROUR: some of the stores were closed, yes.

12 MR. BORRELLI: All right.

13 MR. SROUR: But we lost them when they were closed.

14 THE COURT: After the date of the lawsuit which was
15 November 2010?

16 MR. SROUR: Yes. Some of them closed after --

17 THE COURT: After November 2010?

18 MR. SROUR: -- after -- yes. In 2011, I closed
19 nine stores.

20 MR. BORRELLI: Right. Were any of those reopened -
21 -

22 MR. SROUR: No.

23 MR. BORRELLI: -- under a different name?

24 MR. SROUR: The last stores that I closed
25 completely, they closed and some stores that we could not

1 continue, we brought in some partners that we reconstituted
2 under new names.

3 THE COURT: How many of those nine stores?

4 MR. SROUR: The stores that are closed, they
5 closed. But the stores that we stayed -- were reopened is
6 3300 Broad -- I can give you the names.

7 MR. BORRELLI: I mean, Your Honor, we're playing
8 games here. So the other stores were not closed. Just
9 because they were --

10 THE COURT: Mr. Borrelli?

11 MR. SROUR: No.

12 THE COURT: Follow up on your question and get the
13 names of the stores that were reopened since 2010, sir?

14 MR. SROUR: Right now. 2011.

15 MR. BORRELLI: Mr. Sroure, of the store that --

16 THE COURT: We're in 2012, Mr. Sroure.

17 MR. SROUR: Oh, yes.

18 MR. BORRELLI: Let me do it this way. Of the
19 stores that you listed in your declaration that were closed,
20 which ones of those, when you go down the list one by one,
21 were reopened?

22 THE COURT: Okay.

23 MR. SROUR: Okay. Valentine Avenue Discount
24 Center, we closed it.

25 THE COURT: Is it still closed?

1 MR. SROUR: Yes. We closed the company and the
2 store that were reopened --

3 THE COURT: At the same address?

4 MR. SROUR: At the same address.

5 THE COURT: When did you reopen at the same
6 address?

7 MR. SROUR: In this -- in October 2011. Around
8 there.

9 MR. BORRELLI: It was closed in October '11 and
10 then reopened that same month?

11 MR. SROUR: Yes.

12 MR. BORRELLI: All right.

13 MR. SROUR: El Mundo of 133rd Street and Broadway,
14 also we did the same thing. We have -- we closed in
15 September and we reopened in October. El Mundo of Amsterdam
16 Avenue is closed completely. That was in January last year.
17 We gave it back to the landlord. El Mundo of Jamaica Avenue
18 in January 2011, we -- I walked out from that store and the
19 manager took over the store from the -- by himself.

20 THE COURT: But it's still open as El Mundo of
21 Jamaica?

22 MR. SROUR: No. The sign still says El Mundo but
23 the owner is a different owner.

24 THE COURT: And who is that owner?

25 MR. SROUR: His name is Assi (ph.).

1 THE COURT: Assi what?

2 MR. SROUR: Nechmais. N-E-C-H-M-A-I-S. He used to
3 work for me and he took it over.

4 THE COURT: N-E-C-H-I-M-A-S?

5 MR. SROUR: Yes. Nechmais. Yes. El Mundo of
6 Knickerbocker was taken -- we gave up the lease. Was taken
7 over by Rainbow Shop.

8 THE COURT: So that was closed?

9 MR. SROUR: Completely. Yes. Rainbow Shop is
10 there now. El Mundo of Southern Boulevard we gave it back to
11 the landlord on August 30th. I have no idea what they did
12 with it, but --

13 THE COURT: It's closed?

14 MR. SROUR: It's closed. El Mundo of Steinway, we
15 gave it back to the landlord in July 2009. El Mundo of
16 Willis Avenue is closed completely. We gave it back to the
17 landlord.

18 THE COURT: And when was that?

19 MR. SROUR: In March 2010. American Place at
20 Fourth Avenue, it was a sublease from Duane Reade and we gave
21 it back to Duane Reade and --

22 THE COURT: When was that?

23 MR. SROUR: -- January 2011.

24 THE COURT: And it's still Duane Reade?

25 MR. SROUR: It's closed, the store, but --

1 THE COURT: And American Place at Fourth Avenue?

2 MR. SROUR: That's American Place at Fourth Avenue
3 was given back to Duane Reade. It was a sublease from Duane
4 Reade. I would get --

5 THE COURT: And 8th Street?

6 MR. SROUR: You're jumping. I don't know. You
7 have a different list.

8 THE COURT: I'm sorry. I was on American Place at
9 86th Street. You went ahead to American Place at Fourth
10 Avenue.

11 MR. SROUR: Maybe I have a different list.

12 THE COURT: He has a different list.

13 MR. SROUR: No, this list I'm looking at.

14 THE COURT: Okay. Go ahead. That's the closed
15 list. American Place at 86th is still open?

16 MR. SROUR: Yes.

17 THE COURT: It's American Place at Fourth Avenue
18 that's closed?

19 MR. SROUR: Yes. American Place at Nostrand, we
20 gave back the lease to -- there was a dispute between the
21 sublessee and the landlord and it wind up giving back to the
22 landlord on April 2011.

23 THE COURT: And it's still not your store?

24 MR. SROUR: That's not my store, no. American
25 Place of Broadway was -- I mean, I'm going through the list

1 that we have -- was never a store. This is a leaseholder
2 that we did to revamp to the sublet so there was no employees
3 there. Thirteenth Avenue Bergament Home Center it's a store
4 that is -- we closed -- still in operation under the new
5 name. This one is 1-9 West Fordham Road.

6 THE COURT: Who operates it?

7 MR. SROUR: One of my guys that we used together.
8 His name is Carlos Cartagena.

9 MR. BORRELLI: He said 1-9 West what Road?

10 MR. SROUR: 1-9 West Fordham Road.

11 MR. BORRELLI: Fordham Road.

12 MR. SROUR: That was -- that one used to be 13th
13 Avenue Bergament Home Center.

14 MR. BORRELLI: Right. In what city?

15 MR. SROUR: In the Bronx.

16 THE COURT: 1-9 Fordham Road?

17 MR. SROUR: Yes.

18 THE COURT: Go ahead.

19 MR. SROUR: 146th Street Discount Center, this is
20 also a store that we're operating right now under a new
21 entity.

22 THE COURT: And what's the name of that entity?

23 MR. SROUR: The new entity is 103rd and Park? No.
24 I really don't know exactly the name. But I know the name
25 outside is El Mundo. But there's a --

1 THE COURT: So it still says El Mundo?

2 MR. SROUR: D/b/a El Mundo, yes.

3 THE COURT: And it's at 158th Street?

4 MR. SROUR: No, no. 146th Street. That's at 3560
5 Broadway.

6 THE COURT: And that's still in operation?

7 MR. SROUR: Yes.

8 THE COURT: And did you post at that store?

9 MR. SROUR: No.

10 THE COURT: You're required by the order to post at
11 any store in operation.

12 MR. SROUR: Even -- even --

13 THE COURT: Whether or not you changed the name.

14 MR. SROUR: Oh. Okay. I will post it. I was told
15 by my attorney to post only the stores that I have on the
16 list.

17 THE COURT: You said all the other stores were
18 closed, sir. If the stores are closed, you can't post. If
19 you've changed the name --

20 MR. SROUR: Okay.

21 THE COURT: -- but the store is still in operation,
22 you must post.

23 MR. SROUR: Okay. I will post. Immediately. I
24 didn't know that I was supposed --

25 THE COURT: Sir, you are -- continue down the list.

1 You're trying my patience that you don't know so much.

2 MR. SROUR: No, no. No, no. I -- 158th Street
3 Discount Center, company that was -- we closed that store
4 September 2011. We gave it back to the landlord. That was
5 also a Duane Reade store. American Department Store is still
6 -- is operated under a new entity, under McDonald Avenue
7 Apparel, so we have to post it there, also. Window Holding
8 Company was never a store. That was a company that we took a
9 care of our -- we had our trucks register in that company.
10 Just for the -- just so in case we have liability issues.
11 Grand Concourse Discount is closed completely, given back to
12 the landlord.

13 THE COURT: When?

14 MR. SROUR: In June 2011 and now it's a gym. Grant
15 Department Store, that was a company back in -- very old
16 company, even before April 2008. Even though I wrote
17 April --but I researched it and it was like in the year 2000.
18 I don't know if you --

19 THE COURT: So is that a --

20 MR. SROUR: -- that's a --

21 THE COURT: -- store that you operated?

22 MR. SROUR: No, no. We closed.

23 THE COURT: When?

24 MR. SROUR: This store was closed in August 30th,
25 2011. It was 3791 Broadway. We gave it back to the

1 landlord.

2 MR. BORRELLI: Excuse me. Was that the Grant
3 Department Store?

4 MR. SROUR: Yes. Grant Department Store.

5 THE COURT: Now we're up to Willis Avenue?

6 MR. SROUR: Yes. Willis Avenue Discount Center
7 also was given back to the landlord in March 2011.
8 Dominicano Department Store was -- it's the same leaseholder
9 for Grant Department Store back in 1997 when we took this
10 store so that was --

11 THE COURT: There's no separate store that's known
12 as Dominicano Department Store?

13 MR. SROUR: No, no. I know it.

14 THE COURT: That's the same as Grant --

15 MR. SROUR: Yes.

16 THE COURT: -- or Grand?

17 MR. SROUR: Grant.

18 THE COURT: Grant?

19 MR. SROUR: It's the same one.

20 MR. BORRELLI: And that was my concern because he
21 said that it was closed before 2000 and at another time he
22 said 2011, unless I misunderstood.

23 MR. SROUR: And Rainbow Department Store, this is
24 the same as El Mundo of 133rd, the same store, the same
25 location.

1 THE COURT: El Mundo of what?

2 MR. SROUR: El Mundo Department Store, that was the
3 leaseholder back in 1990 when we took the store, but it's the
4 same operator as El Mundo of 133rd.

5 MR. BORRELLI: So that --

6 MR. SROUR: So --

7 MR. BORRELLI: -- and that store's open, right?

8 MR. SROUR: Yes. The one I mentioned before, yes.

9 MR. PETERS: But it's not a company. I think he
10 said it's just a leaseholder --

11 MR. BORRELLI: No.

12 MR. PETERS: -- he didn't have employees.

13 MR. BORRELLI: No. He said he reopened it October
14 2011. It was the same month he listed it as closed.

15 THE COURT: Yes. He said he closed it in 9/11 and
16 reopened it in 10/11.

17 MR. SROUR: That's the same location, yes.

18 MR. PETERS: But is it a leaseholder or an actual
19 company?

20 MR. SROUR: El Mundo Department Store, the company
21 El Mundo Department Store is not existing since 1990. It was
22 a leaseholder.

23 THE COURT: But El Mundo of 133rd Street closed in
24 9/11 --

25 MR. SROUR: Yes.

1 THE COURT: -- and reopened on --

2 MR. SROUR: Yes.

3 THE COURT: 10/11.

4 MR. SROUR: Yes. Yes.

5 THE COURT: Continue on.

6 MR. SROUR: Five Star Department Store was for the
7 same as Valentine Avenue Discount was the leaseholder back in
8 1992 when we took the building, but it doesn't exist any more
9 but it's still in operation right now.

10 THE COURT: The Valentine Avenue --

11 MR. SROUR: Yes.

12 THE COURT: -- Discount Store?

13 MR. SROUR: Yes. Yes. Yes. Under a new entity
14 obviously. Kingstone Distributor was also a leaseholder back
15 in 1997 for 3560 Broadway.

16 MR. BORRELLI: You skipped Hamilton Variety.

17 MR. SROUR: Hamilton Variety Company was the same
18 as 3300 Broadway also. That was a very old company also,
19 before the year 2000.

20 THE COURT: And I'm sorry. Kingstone?

21 MR. SROUR: Yes. Kingstone Distributors?

22 THE COURT: Yes.

23 MR. SROUR: It's a leaseholder for 3300, 3560
24 Broadway.

25 MR. BORRELLI: You mentioned before that there are

1 nine stores that closed but there's much more than nine,
2 correct?

3 MR. SROUR: I said nine stores -- I believe -- I
4 didn't count how many stores I closed in 2011 but between
5 2010 and 2011, I closed a lot of stores.

6 THE COURT: How many are open and operating today?
7 I don't care what name they're under.

8 MR. SROUR: That I own myself or I own with other
9 people?

10 THE COURT: With others. It doesn't matter.

11 MR. SROUR: It doesn't matter. It's seven stores,
12 three in Brooklyn, three in upper Manhattan and two in the
13 Bronx. That's eight stores.

14 THE COURT: And are they listed, the addresses
15 on --

16 MR. SROUR: Yes.

17 THE COURT: -- as defendants in this action?

18 MR. SROUR: No. I mean, the addresses are there,
19 yes. Just that we changed the --

20 THE COURT: Names were changed, so --

21 MR. BORRELLI: Yes.

22 THE COURT: all eight stores are in operation?

23 MR. SROUR: Yes.

24 THE COURT: And that means that you have the
25 obligation to post the notice at all eight stores.

1 MR. SROUR: I will do that immediately.

2 THE COURT: Mr. Borrelli? You're trying to do the
3 count on whether we have eight stores?

4 MR. BORRELLI: Yes. I mean, we have Valentine
5 Avenue, El Mundo of 133rd, El Mundo of Jamaica --

6 MR. SROUR: No. Jamaica is not there.

7 MR. BORRELLI: -- except your manager took it over
8 and --

9 THE COURT: Nechmais?

10 MR. SROUR: Yes. But it's not my store. He
11 doesn't -- he owns it. I don't own it.

12 THE COURT: But it's named as a defendant here.

13 MR. SROUR: Oh, yes.

14 THE COURT: I don't care. You -- again, you are
15 the only one that was named individually, but his store is
16 named -- El Mundo of Jamaica is still in operation.

17 MR. SROUR: No. Your Honor, El Mundo of Jamaica
18 was my company.

19 THE COURT: Yes.

20 MR. SROUR: I walked out.

21 THE COURT: Yes.

22 MR. SROUR: And he wanted the job, so he went and
23 he took the store on his own.

24 THE COURT: Yes.

25 MR. SROUR: You're saying that.

1 THE COURT: There's still liability, sir.

2 MR. SROUR: Against him?

3 THE COURT: Against you --

4 MR. SROUR: Oh, yes. No.

5 THE COURT: -- for operating the store.

6 MR. SROUR: Before, yes. But the store's closed
7 now.

8 THE COURT: But again, sir, if he is just a shell
9 that's in place, I don't know what the transaction was. I
10 don't need to speak to it now. If that store is still in
11 operation as an El Mundo store, it's been named in a federal
12 lawsuit. It must post the notice and it must comply with
13 giving records.

14 MR. SROUR: Even though it has nothing to do with
15 me?

16 THE COURT: You're named as an individual here,
17 sir. However, the stores are named as companies.

18 MR. SROUR: Okay.

19 THE COURT: Unless he has completely disbanded the
20 corporation and reconstituted under a different name, if this
21 company is named, I don't care who the manager is.

22 MR. SROUR: Yes. This company is dissolved. He
23 opened his own store, his own business.

24 THE COURT: I haven't seen any proof --

25 MR. SROUR: Oh, okay.

1 THE COURT: -- that the company was dissolved.

2 MR. SROUR: Oh, okay.

3 THE COURT: And if the store was in operation until
4 and we don't know the date on this one, it's still in
5 operation but we don't know when it was closed under your
6 management, but you are being sued for not paying the wages
7 that are required under the Federal Labor Law and the New
8 York State Labor Law and that obligation goes back under
9 state law, could be six years.

10 And under federal law, if they're still in
11 operation, sir, and they're named as a company and you have
12 not produced anything to show they're disbanded, they're
13 liable.

14 Continue on with telling me which stores are the
15 eight stores that you're still operating so that I know -- I
16 am going to get the records for those eight stores.

17 MR. BORRELLI: Your Honor, I believe we're at six.
18 I'm adding the six there and then the two Bergament outlets
19 and an American Place 86th Street equal eight.

20 THE COURT: But he said three Brooklyn, three in
21 Manhattan, two in the Bronx. The Bergament and the
22 Bergament's in Brooklyn and the American Place is in Brooklyn
23 as well. Isn't that correct?

24 MR. SROUR: The 86th Street is in Brooklyn, yes.

25 THE COURT: So there's one more store in operation

1 in Brooklyn --

2 MR. SROUR: Yes.

3 THE COURT: -- there are three in Manhattan and two
4 in the Bronx.

5 MR. SROUR: Yes.

6 THE COURT: Can you tell me which those are?

7 MR. SROUR: Okay. The third one in Brooklyn is
8 American Place which we call now McDonald Apparel, 1726
9 McDonald Avenue.

10 THE COURT: Do you have that address, Mr. Borrelli?

11 MR. BORRELLI: I do as was mentioned before.

12 THE COURT: Go ahead.

13 MR. SROUR: The one in the Bronx and upper
14 Manhattan we have 3300 Broadway.

15 MR. BORRELLI: 3300?

16 MR. SROUR: Yes.

17 THE COURT: And what's the name of that store?

18 MR. SROUR: That's what we called as you know El
19 Mundo of 133rd. And the seventh one as you know over here in
20 this list as 146th Street Discount Center is 3560 Broadway.

21 THE COURT: 3560?

22 MR. SROUR: Yes. And the one you called -- they
23 have it here under American Place of Broadway has a
24 leaseholder which is 3837 Broadway.

25 THE COURT: And this is --

1 MR. SROUR: Still --

2 THE COURT: -- still Manhattan?

3 MR. SROUR: Yes.

4 THE COURT: And that's American Place -- I'm sorry?

5 MR. SROUR: As known over here, American Place of
6 Broadway.

7 THE COURT: And what's the address?

8 MR. SROUR: 3837 Broadway. And the two stores in
9 the Bronx, we have the Valentine Avenue at 2510 Valentine
10 Avenue.

11 THE COURT: I'm sorry, sir. I'm trying to locate
12 it on the list. Say it again.

13 MR. SROUR: Valentine Avenue Discount.

14 THE COURT: Okay.

15 MR. BORRELLI: Okay. It's right there.

16 MR. SROUR: Which is 25 --

17 THE COURT: The first one --

18 MR. SROUR: Yes.

19 THE COURT: -- that was sued.

20 MR. SROUR: 2510 Valentine Avenue and the other one
21 was the one we spoke about is 1-9 West Fordham Road.

22 THE COURT: And what's the name of that?

23 MR. SROUR: El --

24 THE COURT: That's El Mundo?

25 MR. SROUR: -- El Mundo. El Mundo, also. Yes.

1 MR. BORRELLI: That one was formerly 13th Avenue
2 Bergament Home Center?

3 MR. SROUR: Yes.

4 THE COURT: Now again, I am quite amazed that you
5 didn't understand that a court order of the Federal Court
6 should be given its -- should be given your highest priority.
7 I've never had this situation. Never. We now have eight
8 stores that you have to get the payroll records for. And you
9 have to get them by Monday. And you can produce the payroll
10 records. You don't have to produce pay stubs for each of
11 these. They had to pay according to something that was fed
12 into some -- they don't do payroll records by people calling
13 them and say, "Cut a check to so-and-so." They get records
14 and they computerize the print-outs.

15 MR. BORRELLI: And just so I'm clear, the
16 testimony, Mr. Sroure, none of the records or any of the
17 stores' payroll records are kept on a computer?

18 MR. SROUR: They're kept by Paychex. We have the
19 envelopes that they deliver every week.

20 MR. BORRELLI: How does Paychex get the
21 information? How do they know what to pay each employee?

22 MR. SROUR: The managers, after they check in the
23 time clock at the end of the week, they call up Paychex on
24 Monday and Wednesday they deliver the check.

25 MR. BORRELLI: Do they send something in writing to

1 Paychex?

2 MR. SROUR: No. They do it over the phone, I
3 think.

4 MR. BORRELLI: So the manager of the store orally
5 reports the hours of each employee to Paychex?

6 MR. SROUR: Yes.

7 MR. BORRELLI: And Paychex then cuts the check
8 based on the information that they're told orally?

9 MR. SROUR: Yes. And then we get the checks and we
10 have -- we give it to the employees. Usually the employees
11 take cash anyway.

12 MR. BORRELLI: But is the punch clock computerized?

13 MR. SROUR: It's a punch clock.

14 MR. BORRELLI: Who totals up all the hours for each
15 employee?

16 MR. SROUR: This I don't know exactly.

17 THE COURT: You understand you're under oath?

18 MR. SROUR: Yes, I do.

19 THE COURT: And you understand that if you're
20 saying that a manager calls in the information to Paychex,
21 Paychex better have information?

22 MR. SROUR: Definitely. Paychex will have
23 information.

24 THE COURT: Okay. You have your eight stores and
25 you have employees going back for six years to produce.

1 Well, again, according to the list that you gave us --

2 MR. BORRELLI: Three years, Your Honor, I mean --

3 THE COURT: But under the wilfulness, 2008 to 2011
4 is what I've ordered.

5 MR. BORRELLI: Yes.

6 THE COURT: But get the Paychex records whether or
7 not you're going to produce them so that you can show if
8 there's --

9 MR. SROUR: Can I ask -- can I ask Your Honor
10 something?

11 THE COURT: Yes.

12 MR. SROUR: When you say 2008?

13 THE COURT: Yes.

14 MR. SROUR: You mean the full year 2008, full year
15 2009, full year 2010?

16 THE COURT: It's actually from I believe 2008 in
17 November until the present.

18 MR. SROUR: So that's --

19 THE COURT: November of 2008 until the present.

20 MR. SROUR: Oh. So November 8 [sic] -- November
21 2008 so we start December and on?

22 THE COURT: No. November, December, January --

23 MR. SROUR: That's right. Yes.

24 THE COURT: -- February. November of 2008 'till
25 the present must be produced to Mr. Borrelli.

1 MR. PETERS: Your Honor, he's supposed to produce
2 the four things. I'm trying to figure out if he's going -- I
3 got to -- I don't know. I was going to come up with when
4 these people worked there, as you could see that it seems
5 like that the record keeping was a little shaky --

6 THE COURT: Mr. Peters?

7 MR. PETERS: Yes, Your Honor.

8 THE COURT: I think you should stop talking. He
9 said that the Paychex company is going to have the
10 information. If he hasn't gotten on the phone already to
11 them, he should be driving out to pick up the information,
12 perhaps with his attorney, because this is a serious matter.
13 He's the one that's personally on the hook and line.

14 He's got eight stores that he needs to post in
15 immediately. He's only posted in two. Plaintiffs can go and
16 inspect to make sure that there is a posting in a public area
17 that the employees can see. Do you understand?

18 MR. PETERS: I do.

19 THE COURT: If he didn't understand before, you
20 must understand now that if there's a judgment entered
21 against your companies, that this is something that the
22 plaintiffs could try to attach bank accounts on, could try
23 to -- they're going to be entitled to get tax returns.
24 They're going to be entitled to see what the accountant says
25 about preparation of these -- it doesn't make a whole lot of

1 sense to me that somebody's staying on a phone once a week
2 and going over punch cards. That's not generally how
3 business is conducted, but if that's what your client is
4 swearing to under penalties of perjury, he'd better get
5 something to back it up.

6 MR. PETERS: Yes, Your Honor.

7 THE COURT: Do you understand, Mr. Srouer?

8 MR. SROUR: That's what we do to get the payroll.
9 Unless --

10 THE COURT: That's what you're going to get.
11 You're going to get the Paychex company to give you the
12 payroll records. Mr. Borrelli, do you have other questions?

13 MR. BORRELLI: Just one more issue I want to follow
14 up on. In producing the first list of names you have in
15 front of you, I believe you testified earlier -- you went
16 around to the stores to get those names. Is that correct?

17 MR. SROUR: Yes.

18 THE COURT: What about the stores that are closed?
19 How did you get the names off of there? Those stores --

20 MR. SROUR: There are stores that are closed that I
21 thought that we didn't have a lot of files on that, but I
22 realize that some files they were in different locations, so
23 we're not -- I have to organize it this week and get you all
24 the information.

25 MR. BORRELLI: You have to organize what this week?

1 MR. SROUR: Get myself -- get all the files or
2 whatever I have. Go over them the right way just so we can
3 get you the information for the stores that are closed.

4 MR. BORRELLI: Your files were available to you two
5 weeks ago, right?

6 MR. SROUR: No. I didn't know we had -- they were
7 not -- I thought that when we closed the stores, we didn't
8 have them but I realize that we -- when I went to work after
9 George told me that it's very serious matter, I realized I
10 have I believe a decent amount of files that are organized
11 and I can get them.

12 MR. BORRELLI: And the roof that collapsed in the
13 Bergament Outlet Center, did you file insurance claim for
14 that --

15 MR. SROUR: Yes.

16 MR. BORRELLI: -- damage?

17 MR. SROUR: Yes. I never collected nothing with
18 that file.

19 THE COURT: When was that snowstorm, sir?

20 MR. SROUR: Last -- I think right after Christmas.
21 The day after Christmas last year.

22 THE COURT: And what records do you say were lost
23 in that snowstorm?

24 MR. SROUR: We had a lot of records, but we lost
25 everything that was in the room and we took them out.

1 THE COURT: Records for all the stores were kept in
2 one store?

3 MR. SROUR: No, no, no. I thought that we had
4 records of payroll and invoices, old invoices and clothing
5 and -- but I realize that records for the -- some invoices,
6 some stores, older ones were there, like 2006, 2005. So I
7 have to do my work to get all the information. But truly,
8 five days is very tight.

9 THE COURT: Sir, you've had since November.

10 MR. SROUR: I know that. But I --

11 THE COURT: And you haven't paid any attention to
12 this matter.

13 MR. SROUR: I'm willing to pay attention to this
14 matter as long as -- I tell you honestly, five days to get
15 everything done, I would need ten days. Please.

16 THE COURT: Sir, you have had since November.

17 MR. SROUR: I understand.

18 THE COURT: I was going to hold you in contempt if
19 you failed to appear here today. I am going to sanction you
20 \$500 per day. Do you understand?

21 MR. SROUR: From Monday?

22 THE COURT: If they're not produced by Monday, each
23 day after Monday that you fail to produce, \$500. Do you
24 understand?

25 MR. SROUR: I understand. But can we do it ten

1 days, please?

2 THE COURT: No. You had since November. You
3 haven't paid any attention.

4 MR. SROUR: No. I was -- okay.

5 MR. PETERS: Your Honor, if I may? Originally you
6 stated that you would give him five business days. He's down
7 from business days to five straight days and two of those
8 days as you know, are a weekend where Paychex will not open.
9 Today is Wednesday afternoon and then he'd only have two days
10 to get the information to Paychex and get it back. I don't
11 mind working on weekends --

12 THE COURT: I will believe that that's a reasonable
13 argument. I was giving you five business days so I will give
14 you until the 25th.

15 MR. PETERS: Thank you, Your Honor.

16 MR. SROUR: Thank you.

17 THE COURT: The 25th it is.

18 MR. SROUR: Thank you.

19 THE COURT: And each day after the 25th, starting
20 on the 26th, there will be a sanction imposed of \$500
21 personally on Mr. Sroure until this information is produced.
22 I am directing you, Mr. Borrelli, to start sending out the
23 notices. I'll have it ECF'd with the new dates.

24 I am directing you, Mr. Sroure, to get the notice
25 posted in all eight stores and to submit a sworn declaration

1 that it has been posted in all eight stores and the date that
2 it was posted. Yes?

3 MR. PETERS: Your Honor, can we have the location
4 of where it's posted? Is that sworn to as well? So if we do
5 want to have somebody inspect it they know where to look.

6 THE COURT: So in other words, where in the store
7 it's been posted? It's supposed to be posted in a
8 conspicuous place. It's put into the order that it should be
9 in a place that employees can view it.

10 MR. PETERS: It seems that the plaintiff is over-
11 reaching.

12 THE COURT: Excuse me?

13 MR. PETERS: It seems that the plaintiff is over-
14 reaching.

15 THE COURT: Have you read the memo and order of the
16 Court regarding what was ordered?

17 MR. PETERS: I did, Your Honor.

18 THE COURT: And it does say that there is supposed
19 to be a notice posted in each of the stores and it gives the
20 notice.

21 MR. PETERS: Correct. And then defendant never
22 received it. However, the Court's order did not state that
23 he has to state where it was posting the notice.

24 THE COURT: Well, that's because I thought this was
25 going to be a normal *Felissa* case where the defendant was

1 going to produce the information ordered by the Court and I
2 didn't think that we were going to have to get down to these
3 sort of issues.

4 MR. SROUR: We --

5 THE COURT: Just wait one moment. It says
6 defendant shall post and plaintiff shall mail the approved
7 notice of pendency.

8 It said that the names, last known addresses,
9 telephone numbers, dates of employment should be provided to
10 plaintiffs' counsel by November 18th.

11 As you know, that was extended on the request of
12 your first attorney and I'm looking to see whether or not it
13 says -- it says on the employee bulletin boards and in other
14 common areas conspicuous to all employees in each of the
15 stores. That's document 27, page 19 and I want a sworn
16 statement that it's been posted not just in compliance with
17 the order, but as it says -- on the employee bulletin board
18 or in the common area conspicuous to all employees.

19 And then again Mr. Borrelli can dispatch anybody to
20 go to any of the stores and if they file a sworn statement
21 that it wasn't posted, again, I can have a hearing on that
22 issue. Do you understand, Mr. Peters?

23 MR. PETERS: I do understand, Your Honor.

24 THE COURT: Mr. Sroure? Do you understand?

25 MR. SROUR: Yes, I do.

1 MR. BORRELLI: The final thing is, and I touched on
2 it earlier and I was definitely rebuked, but one of the
3 things I have not seen thus far are any phone numbers and I
4 don't know if his company would have phone numbers. I guess
5 he can go --

6 THE COURT: He'll go through those files that he
7 was starting to put together and look for phone numbers. Now
8 again, I want there to be a diligent search made. I've given
9 you until the 25th on your second application. I will not
10 give more time. \$500 a day as of the 26th and you know how
11 to get things delivered to Mr. Borrelli so that he gets it by
12 the 25th. You could fax it to him. You could e-mail it to
13 him. But this has to be the records from Paychex. This is
14 not going to be your handwritten list that he could then
15 disavow that he doesn't know how that list was created. Do
16 you understand?

17 MR. PETERS: Yes, Your Honor.

18 THE COURT: Mr. Borrelli?

19 MR. BORRELLI: Last thing from the plaintiff, Your
20 Honor. In our first motion to compel, we asked Your Honor
21 for any relief she deems just and proper.

22 At this point, we want to move for attorneys' fees
23 not for the motion to compel, not for the subsequent phone
24 call to the motion to compel, but for the in-court conference
25 last week and the in-court conference today which are --

1 THE COURT: As you well know, if you're successful
2 under *Felissa*, you can make an application for attorneys'
3 fees. Keep track of your time.

4 I would more appreciate and I'm being frank here --
5 I can't be the only one doing the legal work to try to
6 support what you think is the proper path for the Court to
7 take when there's willful disobedience to a Court order. I
8 haven't gotten any legal help from you, Mr. Borrelli, on that
9 point.

10 MR. BORRELLI: Understood.

11 THE COURT: I'm fashioning this as I see fit and
12 I'm giving Mr. Srouer because he did appear here today and I
13 believe his testimony was forthright because he didn't try to
14 withhold addresses and he did state that there were a number
15 of businesses that were reopened.

16 I'm not speaking to the legality of changing names
17 or horses in mid-stream, but I'm not sanctioning him today
18 because he appeared. I am giving him until the 25th to
19 produce the additional information.

20 Starting on the 26th there will be a \$500 sanction
21 per day leveled against him each day that these records are
22 not produced to you, Mr. Borrelli, and I want to hear from
23 you both by the end of the day on the 26th.

24 It could just be a letter to the Court that records
25 have been produced, that you're working together to make sure

1 that all records are complete, that there has been an
2 affidavit signed under penalty of perjury that the notices
3 were posted in all eight stores on such-and-such date by so-
4 and-so, sworn to.

5 MR. SROUR: May I ask you one more question?

6 THE COURT: Yes, Mr. Srouer.

7 MR. SROUR: The records from Paychex, did they
8 need -- can we because when they give it to us, they give us
9 like the weekly -- the names of the person, his name, his
10 address, his Social Security and how much he got paid.

11 THE COURT: You're going to need all those records
12 for this lawsuit. Those records are important. All that
13 you're required to turn over now is the information that the
14 Court has ordered. The name, the address, the telephone
15 number.

16 You don't have to turn over Social Security numbers
17 now and those weekly payroll records will be something that
18 Mr. Borrelli will be asking for during discover if that
19 person opts-in to the lawsuit.

20 MR. SROUR: Oh, okay. That's all I wanted to know.

21 THE COURT: Is there anything further -- you may
22 step down, sir.

23 MR. SROUR: Thank you.

24 THE COURT: Is there anything further on behalf of
25 the plaintiff, Mr. Borrelli?

1 MR. BORRELLI: No, Your Honor.

2 THE COURT: Is there anything further on behalf of
3 the defendants?

4 MR. PETERS: No, Your Honor.

5 THE COURT: And you do have records with you that
6 you said that you could make copies of? I had my law clerk
7 stay here to make the copies of the closing records for
8 whatever help that will be.

9 Mr. Borrelli, quite frankly, Mr. Srouer gave us a
10 number of other names today -- his accountant, *etcetera*.
11 These are things that may be useful down the road.

12 I'll change the notice that was attached to my
13 order in order to bring the dates into compliance with where
14 we are today. I'll just update the dates of people opting
15 in. As far as whether or not the plaintiffs who do opt-in
16 were prejudiced, we'll deal with that at a later time.

17 And quite frankly, Mr. Peters, there won't be much
18 room for your client to argue that the date because generally
19 speaking, the date that a plaintiff opts in is where you
20 count the statute of limitations.

21 He's not going to have a very good time to argue
22 that they should be help to the opt-in date if there's a
23 notice that could have been issued going back to November.
24 But we'll deal with that down the road.

25 Is there anything else on behalf of either side?

1 Everybody understands what needs to be filed by the 26th and
2 don't make it after Court hours on the 26th.

3 MR. PETERS: No, Your Honor.

4 THE COURT: Because the Court sanction order will
5 be prepared and ready to go.

6 As of today, your client has been given notice
7 clear and explicitly that if he fails to provide this
8 information, the payroll records, regarding these stores by
9 next Wednesday, January 25th, to plaintiff's counsel and
10 fails to provide a sworn statement that he has posted the
11 notice as required by the Court order by that date. He has
12 to file a sworn statement that it's already posted, not that
13 he intends to post it, then there will be a \$500 sanction
14 leveled against Raymond Srouer personally for each day until
15 there is compliance. And that's under Rule 37. Are you
16 clear?

17 MR. PETERS: I am certainly clear, Your Honor.

18 THE COURT: And Mr. Srouer, are you clear?

19 MR. SROUR: Yes.

20 THE COURT: Okay.

21 MR. PETERS: Your Honor, if I may? One last thing.
22 The form that was submitted or that we're planning on
23 submitted. You know, like a general Word document or Excel?
24 Is that sufficient for the Court or do you want --

25 THE COURT: No.

1 MR. PETERS: -- the payroll checks unredacted and
2 based on --

3 THE COURT: I don't want payroll checks
4 necessarily. I want payroll records. Now again, I would
5 prefer that they were issuing checks because they were given
6 names of people and they were given an address and a phone
7 number.

8 In order to prepare things for the business records
9 of each employee of each store, usually there is lists in
10 other ways. Whether it's something that you did for your tax
11 returns. Whether you gave it to the accountant or you gave
12 it to the Paychex company, I don't care.

13 But I don't want you preparing the list that Mr.
14 Srour can then disavow that that's not how they kept the
15 list.

16 MR. PETERS: Your Honor, can I offer something to
17 the Court to show what the type of --

18 THE COURT: Give it to Mr. Borrelli. Don't give it
19 to the Court.

20 (Pause.)

21 MR. BORRELLI: It looks like Mr. Peters has handed
22 me W-2 statements for individual employees. Certainly it
23 appears that they only would have worked that year so it
24 looks like those are the names, addresses, store that they
25 worked at --

1 THE COURT: Again, you could -- you can delete the
2 Social Security Number because that wasn't something that you
3 were required. It doesn't have the phone number so you have
4 to look through other records to see if there are phone
5 numbers.

6 But those records for the year that you've produced
7 them here, I don't know if they're complete -- that every
8 employee was given a W-2.

9 If every employee was and you have W-2's for every
10 single employee at every single store that lists the name and
11 address and that's the last known address that you have for
12 them because if somebody started working for you in let's say
13 2008, they could have changed addresses.

14 So you have to give last known address, you're
15 supposed to give dates of employment and you're supposed to
16 give the store that they worked at and that would be a
17 sufficient business record, the W-2.

18 MR. PETERS: Okay, Your Honor. But that's my point
19 is that the W-2 will not have their phone number or their
20 dates of employment.

21 THE COURT: And that's why I'm saying look on the
22 other information files that Mr. Srour has. Compile the
23 information.

24 I'm sure that Mr. Borrelli would be happier to get
25 the W-2's than to get your handwritten or your typed list

1 because at least this is something that he could use down the
2 road if he needed to use that information. So you can redact
3 the Social Security Number, provide that. Go to Paychex, get
4 their information. Pass it back, Mr. Borrelli.

5 MR. BORRELLI: Sure.

6 THE COURT: And by next Wednesday.

7 MR. PETERS: And I could take that out. We'd ask
8 that we could delete the amount that they were paid --

9 THE COURT: At this point in time you can, but at a
10 later date in the litigation if they do opt-in, it may be
11 relevant to show how much they were paid for that period of
12 time.

13 Okay. I think we're on a better road here. You
14 start getting all the notices out to the people you already
15 have and let's see what information comes back by next
16 Wednesday and we'll see where to go after that. With that,
17 we're adjourned. Thank you.

18 MR. PETERS: And -- oh.

19 THE COURT: Oh, yes, Mr. Peters?

20 MR. PETERS: Your Honor, you stated that you were
21 going to give a new notice or --

22 THE COURT: It's going to be attached to the ECF
23 order that I'm putting out after today's conference so that
24 the old order used dates that they had to opt-in by January.
25 That's not going to be relevant now because they have to be

1 given a sufficient time so I'm just going to update the dates
2 in the notice.

3 It's going to have the same language of the notice
4 that was attached to the November order. November? October
5 order. November order.

6 So this was document 27 and the notice was attached
7 and we're just going to update the notice and attach it to
8 the minute order that I'm filing today reflecting that we're
9 going to have the information submitted, payroll records, by
10 the 25th. Again, that sanctions. He's going to give them
11 notice and an opportunity to be heard and I am imposing
12 sanctions starting on the 26th -- \$500 personally each day
13 until the information's produced.

14 MR. BORRELLI: Your Honor, would it be appropriate
15 for the date on the notice to reflect the 25th with the
16 assumption that we're going to have the records on that date
17 as opposed to let's say today if there issues that would
18 shorten the opt-in period for the peoples' names and
19 addresses --

20 THE COURT: I'll put an extra five days on the opt-
21 in period. So again, I'd rather have the notice reflect
22 today --

23 MR. BORRELLI: All right.

24 THE COURT: -- so that you could start sending it
25 to the 84 people whose addresses you've been provided and I

1 won't cut you off for those five extra days that I'm giving
2 to Mr. Srour -- five business days -- until the 25th. So
3 I'll count the week from today for purposes of the notice to
4 give the extra time to the people to opt-in.

5	Anything else today?
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6 MR. BORRELLI: No, Your Honor.

7 THE COURT: The matter is adjourned.

8 (Proceedings concluded at 4:28 p.m.)

9 I, CHRISTINE FIORE, Certified Electronic Court Reporter
10 and Transcriber and court-approved transcriber, certify that
11 the foregoing is a correct transcript from the official
12 electronic sound recording of the proceedings in the above-
13 entitled matter.

14
15 Christine Fiore

16 January 24, 2012

17

Christine Fiore